

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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E.H.,

Plaintiff,

**COMPLAINT**

-against-

CITY OF NEW YORK, a municipal corporation,  
NEW YORK CITY ADMINISTRATION FOR CHILDREN'S  
SERVICES, NEW YORK STATE OFFICE OF CHILDREN AND  
FAMILY SERVICES, HEARTSHARE HUMAN SERVICES OF  
NEW YORK, INC. f/k/a CATHOLIC CHILD CARE SOCIETY  
OF THE DIOCESE OF BROOKLYN., and HEARTSHARE ST.  
VINCENT'S SERVICES.

Index No. \_\_\_\_\_

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, E.H., by and through undersigned counsel, respectfully shows to this Court and  
alleges as follows:

**INTRODUCTION**

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. Plaintiff, E.H., was approximately eleven (11) years old when she was placed in the care, custody, and control of William Wagner, a single twenty-one (21) year old man who sexually assaulted Plaintiff shortly after her foster care placement. No home study or other investigation was done prior to Plaintiff's placement with William Wagner. Plaintiff was placed into the custody of William Wagner and several other foster homes by foster care agencies HeartShare Human Services of New York and HeartShare St. Vincent's Services, and the New York City Administration for Children Services, a department of the City of New York. Plaintiff's foster

placement, including the placement with William Wagner, were vetted, recruited and/or otherwise approved by the New York City Administration for Children Services, New York State Office of Children and Family Services, HeartShare Human Services of New York and HeartShare St. Vincent's Services.

### **PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, E.H., is a citizen and resident of the State of New York. Plaintiff brings this Complaint using her initials because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if her identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, CITY OF NEW YORK (hereinafter referred hereto as "CITY"), is a municipal corporation, incorporated pursuant to the laws of the State of New York.

3. Defendant, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES (hereinafter referred hereto as "ACS"), is authorized by New York law to care for children in foster care. Children in foster care are in the legal custody of the Commissioner of ACS. ACS has a principal place of business located at 150 William Street, New York, New York 10038.

4. Defendant, NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES (herein after referred hereto as "OCFS") is a state agency organized and existing under the laws of the State of New York. OCFS was formed by Executive Order pursuant to the Welfare Reform Act of 1997 as a merger of the New York Division for Youth and Department of Social Welfare. OFCS is a citizen and resident of the State of New York.

5. Defendant, HEARTSHARE HUMAN SERVICES OF NEW YORK (hereinafter referred hereto as “HEARTSHARE HUMAN SERVICES”) is a not-for-profit New York corporation organized under the laws of the State of New York and is an “authorized agency” as defined in New York Social Services Law § 371 with a principal place of business located at 12 Metrotech Center, 29<sup>th</sup> Floor, Brooklyn, New York 11201. HEARTSHARE HUMAN SERVICES is a citizen and resident of the State of New York.

6. Defendant, HEARTSHARE ST. VINCENT’S SERVICES f/k/a ST. VINCENT’S FAMILY FOSTER AND ADOPTION SERVICES (hereinafter referred hereto as “ST. VINCENT’S SERVICES”) is a not-for-profit New York corporation organized under the laws of the State of New York and is an “authorized agency” as defined in New York Social Services Law § 371 with a principal place of business located at 66 Boerum Place, Brooklyn, New York 11201. ST. VINCENT’S SERVICES is a citizen and resident of the State of New York.

7. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

8. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

9. Venue of this action lies in New York County and a substantial part of the events or omissions giving rise to the claim occurred in New York County or one of the Defendants resides in New York County.

#### **BACKGROUND AND SEXUAL ASSAULT OF THE PLAINTIFF**

10. Plaintiff was placed in foster care in approximately 2000 by Davie County Department of Social Services in Davie County, North Carolina, when she was approximately eleven (11) years old. Plaintiff was removed from the custody of her biological mother and

stepfather due to sexual abuse, negligence and domestic violence. Plaintiff and her siblings were previously removed from her biological parents between approximately 1995 and 1997 due to negligence relating to her biological parent's alcoholism.

11. In approximately August 2000, Plaintiff's biological father was granted full legal and physical custody of Plaintiff by Davie County Department of Child Services. Plaintiff relocated with her biological father to Staten Island, New York.

12. In approximately 2001, Plaintiff was removed from the custody of her biological father by the Defendants after his incarceration.

13. Upon information and belief, in approximately 2001, when Plaintiff was approximately eleven (11) years old, she was placed in the custody, care and control of William Wagner, a single twenty-one (21) year old man, by the Defendants.

14. Upon information and belief, William Wagner, was recruited and approved to serve as a foster parent by the Defendants.

15. Upon information and belief, no background investigation or home stay was performed and/or conducted by the Defendants prior to or during Plaintiff's placement with William Wagner.

16. Shortly after Plaintiff's placement with in the Wagner residence, William Wagner began sexually and physically abusing Plaintiff. The acts of sexual assault committed by William Wagner included, but were not limited to, forced vaginal and anal sex.

17. Upon information and belief, the sexual abuse of Plaintiff was recorded and disseminated by William Wagner.

18. Upon information and belief, Plaintiff was removed from the custody of William Wagner in approximately December 2001 when the Defendants determined that Plaintiff's placement with William Wagner was inadequate or otherwise inappropriate.

19. Plaintiff was placed in several foster homes and facilities from approximately 2001 through 2006.

20. Upon information and belief, in approximately July 2006, Plaintiff was placed with Jorge Gonzalez in a foster home recruited by the Defendants.

21. Thereafter, in approximately 2007, Plaintiff was sexually and physically assaulted by her foster father, Jorge Gonzalez.

22. The acts of sexual assault committed by Jorge Gonzalez included, but were not limited to, attempted vaginal and anal sex.

23. Plaintiff reported the 2007 sexual and physical abuse by Jorge Gonzalez to the Defendants.

24. Plaintiff was not immediately removed from Jorge Gonzalez's custody, care and control despite the Defendant's awareness of the sexual abuse.

#### **NOTICE – FORESEEABILITY**

25. Upon information and belief, William Wagner and Jorge Gonzalez were at all relevant times serial sexual predators who sexually abused children placed in their custody and control by the Defendants.

26. At all relevant times, the Defendants knew or should have known that Plaintiff was sexually assaulted by her biological mother and stepfather prior to placing her in foster homes.

27. At all relevant times, the Defendants knew or should have known that the placement of Plaintiff in the custody, care and control of William Wagner, a single twenty-one (21) year old man, was inappropriate, dangerous and a threat to the health, safety and welfare of Plaintiff.

28. At all relevant times, the Defendants knew or should have known that the placement of Plaintiff in the custody, care and control of William Wagner, a single twenty-one (21) year old man, without first performing a background check or home inspection was inappropriate, dangerous and a threat to the health, safety and welfare of Plaintiff.

29. At all relevant times, the Defendants knew or in the exercise of reasonable care should have known that William Wagner and Jorge Gonzalez had a propensity for the conduct which caused injury to Plaintiff, particularly that they had a propensity to engage in the sexual and physical abuse of children.

30. At all relevant times, it was reasonably foreseeable to the Defendants that William Wagner and Jorge Gonzalez would commit acts of child sexual and physical abuse or assault on a child.

31. At all relevant times, the Defendants knew or should have known that William Wagner and Jorge Gonzalez were unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

32. With such actual or constructive knowledge, the Defendants provided William Wagner and Jorge Gonzalez unfettered access to Plaintiff and gave them the opportunity to commit foreseeable acts of child sexual abuse or assault.

#### **DUTY**

33. At all times relevant and material hereto, defendant CITY was responsible for providing protection and safety and to insure the well-being of New York City's children by providing foster care services for children who needed same.

34. At all times relevant and material hereto, defendant CITY had a duty to use reasonable care in the investigation, licensing, supervision and/or monitoring of foster care facilities, homes and/or families with whom it places foster children and/or to develop or implement programs, guidelines, procedures and/or training to prevent the abuse of foster children placed within foster care facilities, homes and/or families.

35. At all times relevant and material hereto, defendant ACS was a department of defendant CITY and was responsible for providing protection and safety and to insure the well-being of New York City's children by providing foster care services for children who needed same.

36. At all times relevant and material hereto, defendant ACS provided child welfare, child protective and child care services by contracting with private not-for-profit organizations to provide foster care services.

37. By reason of the foregoing, defendant CITY was and is vicariously liable for acts and omissions of defendant ACS and the private non-profit organizations with which defendant ACS contracted with to provide foster care services.

38. At all times relevant and material hereto, defendant ACS provided the above-mentioned child welfare, child protective and child care services as a department of defendant CITY.

39. At all times relevant and material hereto, defendant ACS was the legal guardian of Plaintiff and owed Plaintiff a non-delegable duty of reasonable care to protect her from foreseeable harm.

40. At all times relevant and material hereto, defendant ACS owed a non-delegable duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while she was under its care and custody. Defendant ACS's duties encompassed using reasonable

care in the supervision of children in its custody and control, as well as a duty to use reasonable care in the retention and supervision of foster parents.

41. At all times relevant and material hereto, defendant ACS had a non-delegable duty to use reasonable care in the investigation, licensing, supervision and/or monitoring of foster care facilities, homes and/or families with whom it places foster children.

42. At all times relevant and material hereto, defendant ACS had a non-delegable duty to exercise reasonable care in the training of employees, case workers, and/or agents in the prevention of sexual abuse and protection of the safety of children in its care, custody and/or control.

43. At all times relevant and material hereto, defendant ACS had a non-delegable duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of children in its care, custody and/or control.

44. Defendant ACS is legally responsible for the acts, omissions and negligence of the entities in which it contracts or otherwise approves, accredits, recruits or vets to render and perform foster care services.

45. Defendant ACS is legally responsible for the acts, omissions and negligence of the entities carrying out its non-delegable duties.

46. At all times relevant and material hereto, defendant OCFS or its predecessors, at all relevant times, were responsible for foster care throughout New York State, including compliance with the Federal and State Constitution, federal statutes, and state statutes and regulations, particularly those concerning the safety of children in foster care, protection of their right to bodily integrity, and their right to be free from sexual assault and abuse. These duties were shared with



defendants CITY, ACS, HEALTHSHARE HUMAN SERVICES, and ST. VINCENT'S SERVICES.

47. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES was responsible for providing protection and safety and to insure the well-being of New York City's children by providing foster care services for children who needed same.

48. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES provided child welfare, child protective and child care services by contracting with defendant ACS and/or otherwise agreeing to provide foster care services for children who needed same.

49. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES provided child welfare, child protective and child care services by providing foster care services which included providing a safe and stable home for foster children.

50. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES and Plaintiff were in a special relationship in which defendant HEALTHSHARE HUMAN SERVICES owed Plaintiff a duty of reasonable care to protect her from foreseeable harm.

51. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES and William Wagner were in a special relationship in which Defendant HEALTHSHARE HUMAN SERVICES owed a duty to control the acts and conduct of Plaintiff's foster parents to prevent foreseeable harm.

52. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES and Jorge Gonzalez were in a special relationship in which Defendant

HEALTHSHARE HUMAN SERVICES owed a duty to control the acts and conduct of Plaintiff's foster parents to prevent foreseeable harm.

53. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES was the legal guardian of Plaintiff and owed Plaintiff a duty of reasonable care to protect her from foreseeable harm.

54. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while she was under its care and custody. Defendant HEALTHSHARE HUMAN SERVICES's duties encompassed using reasonable care in the supervision of children in its custody and control, as well as a duty to use reasonable care in the retention and supervision of foster parents.

55. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES had a duty to use reasonable care in the investigation, licensing, supervision and/or monitoring of foster care facilities, homes and/or families with whom it places foster children.

56. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES had a duty to exercise reasonable care in the training of employees, agents, case workers and/or foster parents in the prevention of sexual abuse and protection of the safety of children in its care, custody and/or control.

57. At all times relevant and material hereto, defendant HEALTHSHARE HUMAN SERVICES had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of children in its care, custody and/or control.

58. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES was responsible for providing protection and safety and to insure the well-being of New York City's children by providing foster care services for children who needed same.

59. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES provided child welfare, child protective and child care services by contracting with defendant ACS and/or otherwise agreeing to provide foster care services for children who needed same.

60. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES provided child welfare, child protective and child care services by providing foster care services which included providing a safe and stable home for foster children.

61. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES and Plaintiff were in a special relationship in which defendant ST. VINCENT'S SERVICES owed Plaintiff a duty of reasonable care to protect her from foreseeable harm.

62. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES and William Wagner were in a special relationship in which Defendant ST. VINCENT'S SERVICES owed a duty to control the acts and conduct of William Wagner to prevent foreseeable harm.

63. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES and Jorge Gonzalez were in a special relationship in which Defendant ST. VINCENT'S SERVICES owed a duty to control the acts and conduct of Jorge Gonzalez to prevent foreseeable harm.

64. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES and/or its predecessor entity, was the legal guardian of Plaintiff and owed Plaintiff a duty of reasonable care to protect her from foreseeable harm.

65. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while she was under its care and custody. Defendant ST. VINCENT'S SERVICES's duties encompassed using reasonable care in the supervision of children in its custody and control, as well as a duty to use reasonable care in the retention and supervision of foster parents.

66. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES had a duty to use reasonable care in the investigation, licensing, supervision and/or monitoring of foster care facilities, homes and/or families with whom it places foster children.

67. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES had a duty to exercise reasonable care in the training of employees, agents, case workers and/or foster parents in the prevention of sexual abuse and protection of the safety of children in its care, custody and/or control.

68. At all times relevant and material hereto, defendant ST. VINCENT'S SERVICES had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of children in its care, custody and/or control.

69. Defendants each had the following non-delegable duties with regard to children in foster care, including Plaintiff:

- a. To evaluate and investigate all reports of child abuse and/or neglect;
- b. To visit children in foster home placements in accordance with the requirements for children in custody;
- c. To investigate all relevant conditions of the foster home that might affect the child;

- d. To report any violations of the home's operating license or requirements;
- e. To ensure that foster children residing in a foster home are supervised at all times by authorized adult caregivers;
- f. To continually assess the adequacy and safety of a child's particular placement;
- g. To make appropriate referrals for evaluations or services, and provide each child in foster care with quality services to protect his or her safety and health;
- h. To establish all necessary plans of care;
- i. To report all known incidents of sexual abuse or aggression occurring in the foster home;
- j. To ensure that foster children were not left in dangerous conditions, including being subjected to sexual, emotional or physical abuse.
- k. To ensure that each child in foster care is not maintained in custody longer than is necessary to accomplish the purpose of custody;
- l. To provide each child in foster care who has been freed for adoption with meaningful and appropriate adoption services, including evaluation of the child's placement and pre-placement needs, recruitment of and home study for prospective adoptive parents, placement planning, supervision and post-adoption services; and
- m. To ensure that children are provided a non-threatening environment for candid assessments of their living situation with care managers or other supervisory personnel, to assure that incidents of abuse, misconduct or violations of rights may be reported without fear of repercussion or not being believed.

**BREACH**

70. At all relevant times, there were substantial and serious structural flaws in the foster care system designed and/or implemented by Defendants, and as a result Plaintiff was sexually abused

71. The Defendants breached their duties by (i) failing to protect Plaintiff from sexual abuse and lewd and lascivious acts committed in her foster parents; (ii) failing to adequately, properly and completely investigate the reported sexual assault and abuse of Plaintiff; (iii) failing to remove Plaintiff from the care, custody and control from foster care placements when they became aware of the sexual abuse of Plaintiff; (iv) failing to establish policies and procedures that were adequate to protect the health, safety and welfare of children and protect them from sexual abuse; (v) failing to implement and enforce policies and procedures that were adequate to protect the health, safety and welfare of foster children and protect them from sexual abuse; (vi) retaining and/or failing to supervise William Wagner and Jorge Gonzalez when they knew or should have known that they posed a substantial risk of harm to foster children; (vii) failing to make any inquiry into the background of William Wagner and Jorge Gonzalez before engaging them to perform foster care activities when they knew or should have known that William Wagner and Jorge Gonzalez had a propensity to sexually abuse children; (viii) failing to adequately monitor and supervise Plaintiff; (ix) failing to adequately hire and train employees, agents and case workers; and (x) concealing their knowledge that William Wagner and Jorge Gonzalez, its agents and/or employees were unsafe.

**NATURE OF ALLEGED CONDUCT**

72. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of

the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

73. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety Plaintiff, or knowingly or intentionally, in concert with its agents and employees, to permit William Wagner and Jorge Gonzalez unfettered access to foster children.

**COUNT I - NEGLIGENCE**  
**(against Defendant CITY)**

74. Plaintiff repeats and realleges Paragraphs 1 through 73 above.

75. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

76. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of E.H. and other children.

**COUNT II - NEGLIGENCE**  
**(against Defendant ACS)**

77. Plaintiff repeats and realleges Paragraphs 1 through 73 above.

78. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

79. Defendant's acts and conduct showed a reckless or willful disregard for the safety

and well-being of E.H. and other children.

**COUNT III - NEGLIGENCE**  
**(against Defendant OCFS)**

80. Plaintiff repeats and realleges Paragraphs 1 through 73 above.

81. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

82. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of E.H. and other children.

**COUNT IV - NEGLIGENCE**  
**(against Defendant HEARTSHARE HUMAN SERVICES)**

83. Plaintiff repeats and realleges Paragraphs 1 through 73 above.

84. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

85. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of E.H. and other children.

**COUNT V - NEGLIGENCE**  
**(against Defendant ST. VINCENT'S SERVICES)**

86. Plaintiff repeats and realleges Paragraphs 1 through 73 above.

87. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

88. Defendant's acts and conduct showed a reckless or willful disregard for the safety



and well-being of E.H. and other children.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial in this action.

Dated: New York, New York  
November 7, 2019

Respectfully submitted,

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